

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID PEPIN,

Plaintiff,

v.

WISCONSIN CENTRAL LTD, d/b/a CN,

Defendant.

Case No. 2:19-cv-00042

Honorable Hala Y. Jarbou
Magistrate Judge Maarten Vermaat

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**DEFENDANT'S MOTION FOR LEAVE TO FILE REPLY BRIEF
IN SUPPORT OF ITS MOTION TO DISMISS FOR FRAUD ON THE COURT**

Defendant Wisconsin Central Ltd. ("WCL"), by and through counsel, pursuant to W.D. MICH. LCIVR 7.3(c), respectfully requests leave of the Court to file Defendant's Reply Brief in Support of Its Motion to Dismiss for Fraud on the Court, attached hereto as Exhibit 1 in accordance

with W.D. MICH. LCivR 5.7(f), and in support thereof, states the following:

1. On April 16, 2021, WCL filed Defendant's Motion to Dismiss for Fraud on the Court (ECF No. 102, PageID.509-511) and its Brief in Support (Defendant's Brief Supporting Its Motion to Dismiss for Fraud on the Court, ECF No. 103, PageID.512-523). The motion was filed "pursuant to FED. R. CIV. P. 37(b)(2)(A) and this Court's inherent authority to protect the sanctity of the judicial process." (ECF No. 102, PageID.509).

2. In support of its motion, WCL submitted various exhibits, including Exhibits 5 and 6 (ECF No. 103-5, PageID.574-582; ECF No. 103-6, PageID.583-587) which itemized various Facebook posts of Plaintiff which had previously been visible as public posts prior to August 2020, but which were no longer viewable and which were not produced by Plaintiff in accordance with this Court's Order (ECF No. 85, PageID.490) requiring him to produce social media posts showing his participation in recreational activities.

3. Plaintiff failed to respond timely to the motion¹ but filed a Response and Brief on May 4, 2021.

4. WCL seeks to submit a Reply Brief responding to Plaintiff's Brief in order to address certain inaccuracies and new information contained therein which are addressed more fully in the Brief submitted in support of this Motion and the exhibits attached thereto.

WHEREFORE, Defendant Wisconsin Central Ltd. respectfully requests that this

¹ Pursuant to W.D. MICH. LCivR 7.2(a), motions seeking dismissal as a sanction under Rule 37 are governed by the briefing schedule for non-dispositive motions set forth in W.D. MICH. LCivR 7.3(c). Under that rule, Plaintiff's response was due to be filed on April 30, 2021, 14 days after service of the motion. When that date passed with no response, WCL filed a proposed order granting the motion, ECF No. 114, PageID.669, on May 3, 2021. Plaintiff then filed a motion to extend his time to submit a response, ECF No. 115, PageID.670, on that same day, followed by the actual response the next day. This Court thereafter entered its Order granting the extension, ECF No. 121, PageID.769.

Honorable Court grant leave for and accept the filing of Defendant's Reply Brief in Support of Its Motion to Dismiss for Fraud on the Court which is attached hereto as Exhibit 1.

Respectfully submitted,

Dated: May 10, 2021

By: /s/ Charles H. Russell, III
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CERTIFICATE OF SERVICE

I, Charles H. Russell, III, one of the attorneys for Defendant Wisconsin Central Ltd. hereby certifies that on the date shown below, I served the foregoing **Defendant's Motion for Leave to File Reply Brief in Support of Its Motion to Dismiss for Fraud on the Court** with the Clerk of the Court by using the Court's CM/ECF system which then will send notification of such filing upon all counsel of record. I declare that the statement above is true to the best of my knowledge and information.

Dated: May 10, 2021

/s/ Charles H. Russell, III
CHARLES H. RUSSELL, III